

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDERICK MARK COOLEY,

Defendant and Appellant.

B174298

(Los Angeles County  
Super. Ct. No. GA055291)

APPEAL from a judgment of the Superior Court of Los Angeles County, Clifford L. Klein, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, and Frederick M. Cooley, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

---

Frederick Cooley appeals from the judgment entered following his negotiated plea of no contest to felonious assault. The plea, which was entered on February 6, 2004, was based on an incident in which defendant beat his girlfriend while the two were driving on the freeway. Defendant, who represented himself in the trial court, was sentenced immediately following his plea to the lower term of two years, and allegations of corporal injury to a cohabitant and criminal threats were dismissed in furtherance of justice.

Following sentencing, defendant made a motion for a new trial and requested a certificate of probable cause on grounds of prosecutorial misconduct and newly discovered evidence. On March 15, 2004, the motion was denied. Also on that date, defendant filed a timely notice of appeal.

Defendant later made a second request for a certificate of probable cause and filed a petition for a writ of habeas corpus, arguing that his confrontation rights had been violated. The request and the petition were denied on May 7, 2004.

On May 20, 2004, defendant filed a second petition for a writ of habeas corpus, this time alleging that he should be allowed to withdraw his plea because he had not been advised that under Penal Code section 296 he would be required to provide blood and saliva samples for law enforcement identification analysis. The petition was denied on June 14, 2004.

We appointed counsel to represent defendant on appeal. On September 23, 2004, appointed counsel filed an opening brief in which no issues were raised. (*People v. Wende* (1979) 25 Cal.3d 436, 441–442.) Also on September 23, we notified defendant that he could personally submit any contentions or issues that he wished us to consider. Defendant submitted such a response.

In defendant's response, he makes the same argument as he made in his habeas corpus petition of May 20, 2004; that is, that he should be allowed to withdraw his plea because he had not been told of the requirements of Penal Code section 296. The argument comes too late. The appeal which is under consideration by this court is from the judgment that was entered on February 6, 2004, long before the filing of the petition for a writ of habeas corpus that is the subject of defendant's argument. We further note

that an appeal does not lie from the denial of a habeas corpus petition; rather, a new petition must be filed in the appellate court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *In re Hochberg* (1970) 2 Cal.3d 870, 876.) Accordingly, defendant's argument is not properly before us at this time and will not be considered.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

SUZUKAWA, J.\*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.